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July 24, 2008

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VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte Communication*: WC Docket No. 07-97, Petitions of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas

Dear Ms. Dortch:

On July 1, 2008, Qwest Corporation ("Qwest") filed an *ex parte* letter in the above-captioned proceeding alleging that competitive carriers have not taken into account "NextLink's remarkable successes over the past year" when addressing competitive activity in the enterprise market in the four Metropolitan Statistical Areas ("MSAs") at issue.¹ Qwest contends that NextLink "is in the midst of an era of unprecedented growth"² and that the fixed wireless broadband services provided by NextLink in these four MSAs constitute "a direct alternative in the Enterprise business market to land-line based broadband services offered by Qwest."³ Although XO previously has responded to Qwest's inaccurate and misleading

¹ Letter from Daphne Butler, Corporate Counsel, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed Jul. 1, 2008) ("*Qwest July 1st Ex Parte*"), at 2.

² *Id.*

³ *Id.*, at 3.

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statements regarding NextLink's enterprise market activities in these MSAs,⁴ a brief reminder of the facts is nevertheless in order.⁵

Qwest is incorrect that NextLink's actual market presence in the four MSAs is not reflected in the empirical data submitted by competitive carriers. As stated in the *CLEC June 16th Ex Parte*, the GeoResults lit commercial building data provided to the Commission in all cases includes "the limited use by enterprise customers of NextLink's fixed wireless alternative" to Qwest's loops.⁶ In addition, and more importantly, Qwest's contentions regarding NextLink's robust market presence in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle MSAs are belied by the facts. Currently, NextLink [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] in the Phoenix MSA. NextLink likewise serves [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] in the Seattle MSA, and in the Denver and Minneapolis-St. Paul MSAs, NextLink currently [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL].

Not surprisingly, Qwest fails to provide any data purporting to show the number of commercial buildings in the four MSAs that currently are served via NextLink's fixed wireless services, nor does it attempt to quantify the number of commercial buildings that it believes NextLink can serve in this manner within a commercially reasonable period of time. Qwest relies instead on NextLink earnings reports containing nationwide revenues and revenue growth statistics.⁷ It is well-established, however, that evidence of competitive activity in the particular geographic markets at issue – in this case, the Denver, Minneapolis-St. Paul, Phoenix, and Seattle MSAs – is the only type of market data that is relevant to the Commission's forbearance analysis. Nationwide revenue or growth figures are not applicable and have no probative value. Qwest also attempts to use statements from XO and NextLink press releases to support its representations.⁸ This "evidence" fails for the same reason as the nationwide revenue data proffered by Qwest; *i.e.*, it proves nothing regarding the nature or extent of facilities-based competition in the Denver, Minneapolis-St. Paul, Phoenix, or Seattle MSA.

⁴ See Letter from Brad Mutschelknaus, Counsel to Covad Communications Group, *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed Jun. 16, 2008 ("*CLEC June 16th Ex Parte*")).

⁵ It should be noted that although Qwest repeatedly refers to XO as the parent company of NextLink, in reality XO and NextLink are sister companies. See, *e.g.*, *Qwest July 1st Ex Parte*, at n.1.

⁶ *CLEC June 16th Ex Parte*, at 6.

⁷ *Qwest July 1st Ex Parte*, at 2.

⁸ See *Qwest July 1st Ex Parte*, at 2-4.

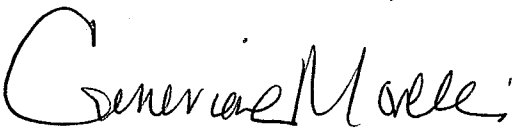
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In short, Qwest's efforts to discredit the record evidence submitted by interested parties and to suggest that competitive carriers have misrepresented the presence of NextLink in the enterprise market in the four MSAs at issue fall far short of the mark and should be rejected by the Commission.

Respectfully submitted,

XO COMMUNICATIONS, LLC

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